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ABSTRACT

The college catalog is discussed with regard to its contractual obligations and applicable federal legislation, and court cases are examined. Historical developments, elements of a contract, and student rights are also addressed. It is suggested that although the university is contractually bound by its published policies and procedures, it can avoid misunderstandings and prevent consumer suits by stating in the catalog that courses listed are subject to change through normal academic channels. It is recommended that the university should implement the following guidelines: review the catalog for correctness; make adjustments necessary in the catalog information to provide the accurate statements of contractual obligations; establish a procedure for change in which all policies, procedures, degree requirements, or curriculum are changed for the effective printing date of the catalog; implement procedures and support systems that insure the honoring of the catalog information such as a computer degree check file that monitors the student automatically according to the date of entry into the university and major program; and inform necessary personnel of the binding nature of the catalog and of their responsibility to honor the stated catalog requirements. (SW)

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LEGAL RESPONSIBILITIES AND CONTRACTUAL OBLIGATIONS IMPOSED ON A UNIVERSITY BY ITS CATALOG

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Introduction

The origin of the university catalog was to provide a listing of the institution's curriculum. Through the evolvement of the American universities, the catalog has been expanded in its purpose and content.

Most university catalogs now include information regarding admissions criteria, registration procedures, deadlines, general academic policies, and degree information, in addition to the curriculum listing. To recruit students, many universities have also designed their catalog with special information and attractive pictures.

Many administrators and faculty have regarded the university catalog as an informational brochure, subject to change and not binding upon the university. As a result, changes were an ongoing procedure, and most catalogs, until recent years, contained a disclaimer statement, notifying students that the catalog with its printed policies, procedures, and curriculum was subject to change without notification.

During the past decade, court decisions have redefined the university-student relationship. Some of these decisions characterize provisions of the university catalog as a contract between the university and the student who relies on the catalog when he enrolls. Institutions have been required to pay money damages and grant unearned graduation degrees because of inaccurate information in their catalogs. It is necessary that an institution examine the content of its catalog to see that the appropriate information is provided, that the content is accurate, and that the catalog complies with legal and federal requirements.

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Historical Developments

The main factor which influenced the courts to construe provisions of the catalog as contractual, is the courts' definition of the university-student relationship. Until approximately 1960, the courts defined the university-student relationship as in loco parentis ("in place of the parent"). As early as 1913, the relationship was recognized by the court in Gott v. Berea College,[1] which held that the "College authorities stand in loco parentis concerning the physical and moral welfare and mental training of the pupils, and we are unable to see why, to that end, they may not make any rule or regulation for the government or betterment of their pupils that a parent could do for the same purpose . . . the courts are not disposed to interfere, unless the rules and aims are unlawful or against public policy."[2] The role of in loco parentis, however, was later restricted to reasonable jurisdiction within the educatioinal setting as demonstrated by Guerrieri v. Tyson.[3]

During the 1960's, there were several cases including Dixon v. Alabama State Board of Education,[4] Goss v. Lopez,[5] and Tinker v. Des Moines School District[6] holding that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[7] In addition to litigation clarifying the constitutional rights of a student, the twenty-sixth amendment to the constitution giving the right to vote to eighteen-year-olds in both state and federal elections aided the movement toward lowering the age of majority to the age of eighteen. This change had a specific effect upon universities in that today most students enter the university at the age of majority or soon reach it after enrollment. At the age of majority, a student is *

recognized as a legal adult, thus the university-student relationship changes from in loco parentis to that of contract.

Early in 1970, the courts confirmed that a student entering a college or university establishes a contractual relationship with that institution. In the case Eisele v. Ayers,[8] a group of medical students challenged the right of the school to increase the tuition announced in the catalog. The court stated that the terms of the catalog were not binding for the full four years a student is enrolled. However, the court noted that "the relationship between a school and its students is contractual in nature and the relevant terms of the contract are those set forth in the school catalog."[9]

The number of court cases between colleges and students has increased dramatically in the past fifteen years. Hammon and Shaffer report that prior to 1963, there were only 32 significant cases. Between 1965 and 1969, there were 41 cases. Between 1972 and 1976, there were 102 cases.[12] Not only has the frequency of litigation increased, but the courts have increasingly granted relief to students complaining of breaches of contract or infringement of personal rights. *

Elements of a Contract

Since the courts are inclined to define portions of the university catalog as contractual, it is important to understand the elements of a contract. One definition is, "an oral or written agreement, enforceable by law, and made by two or more legally competent parties with equal freedom to contract, in which legally permissible promises are bargained for and exchanged or in which such a promise is bargained for in exchange for a legally permissible performance: in any case, each

party to such an agreement assumes the legal obligation to confer on the other something of value in exchange for the expectation of acquiring something of value in return."[11]

A contract results from an offer and an acceptance. To be construed as an offer, communication must 1) manifest a present intention to enter into a contract; 2) impart certainty and definiteness of terms; and 3) be communicated to the offeree.[12] The university catalog satisfies these three elements in that it is a document published to attract students, it states the terms of the proposed agreement, and it invites the student to accept the offer by registering at the institution. When the student enrolls, the student and the university enter "into an enforceable contract" according to the terms stated in the catalog.[13] Although some universities have argued successfully that the catalog is not contractual, in Green v. Howard University,[14] the court ruled that statements in the catalog may constitute the terms of a contract.

The institution becomes the offerer in the terms of the contract and, therefore, may specify certain rules and regulations as part of the agreement so long as they are reasonable and do not discriminate. The institution has:[15]

1. The right to establish reasonable standards and procedures for admission, continuation, termination, and readmission of student status.
2. The right to establish the responsibility of providing students with the contractual requirements of both the academic and non-academic areas that have been established in accord with the purpose and mission of the institution.
3. The right to expect its students to honor those standards.
4. The right and responsibility to enforce established standards.
5. The right to expect its administration, faculty, staff, and students to assume appropriate responsibilities for such enforcement.

Court decisions have ruled that the institution may refuse a degree to a student who violates the standards of the university[16] or to a student who has not complied with the conditions and requirements specified for the degree.[17] An institution cannot, however, arbitrarily or without cause refuse either an examination or degree to a student who has met all of the conditions specified in the catalog for graduation.[18]

Requirements by the Government

In 1976, Congress enacted an amendment to Section 493A of Title IV of the Higher Education Act of 1965 entitled: "Student Consumer Information." The amendment requires that all institutions provide certain specified information to all prospective students or currently enrolled students either upon request or in the printed catalog. The specific information required by the amendment includes:[19]

1. Available financial information including all Title IV programs as well as their own and state programs.
2. Cost of attendance.
3. Refund policy.
4. Student eligibility.
5. Criteria used by the institutions to select financial aids recipients and determine award amounts.
6. A statement of the rights and responsibilities of students receiving aid under Title IV programs.
7. Description of academic programs.
8. Figures showing percent of students who have completed a particular course of study.
9. Description of retention rates in terms of each institution's enrollment patterns and types of students.

In addition to this legislation, the federal government also requires universities to publish specific statements "as defined by them" regarding veterans' benefits, nondiscrimination on the basis of sex, nondiscrimination on the basis of handicap, protection of privacy for students and parents, non-immigrant alien students, mailing second class and controlled circulation publications, identification of mail for non-profit organizations, and exemption from federal income tax.[20]

The legislation which has received the greatest attention during the past decade has been the Family Educational Rights and Privacy Act of 1974 which is commonly referred to as the Buckley Amendment. The intention of the Act is to increase the access by students and parents to school records and to restrict the availability of student educational records to third parties.

Universities are required to publish their Confidentiality of Records Policies in the catalog. There are seven major areas of privacy protection provided by the Buckley Amendment.[21]

1. The student must be given access to his or her educational records.

2. The institution must provide an opportunity to the student for a hearing to challenge information in those records, that is, "inaccurate, misleading, or otherwise in violation of the privacy or other rights of students." On this particular point, the hearing referred to should be composed of a special panel selected by the president, of faculty and/or staff. The hearing should not be conducted before the Student/Faculty Behavior Committee.

3. Subject to some exceptions, personally identifiable information in the records cannot be disclosed to third parties without the student's written consent.

4. The institution must keep a record of each third party who has required or who has obtained access to the records.

5. Personal information may only be disclosed by the institution to third parties on the condition that they will not disclose the information to anyone else without the student's written consent.

6. The institution must inform students of their rights under this law.

7. The United States Secretary of Health, Education and Welfare (Office of Education) is required to set up an office and Review Board to investigate, review, and adjudicate violations of this law.

The Family Educational Rights and Privacy Act authorizes the Secretary of the Department of Education to withhold all federal education assistance from institutions which do not comply with the Act.

Student Rights

By virtue of the contractual nature of the catalog, students have the right to know the terms and requirements of the contract. A university catalog should provide the following information regarding student rights:

1. Nondiscrimination guarantee and statement.
2. Terms and conditions of admission.
3. Tuition and costs (including residency requirements if applicable).
4. Financial aids provisions.
5. Code of conduct requirements.
6. Graduation degree requirements.
7. Reasonable confidentiality of records guarantee.
8. Academic due process guarantee and procedures.

Although the courts have ruled that the catalog terms are binding upon the university as a contract, the courts have also ruled that the

student is not bound by everything in the catalog. It is not reasonable that a student can be expected to know and abide by the entire college catalog as a contract on which his rights and duties as a student are based.[22]

Selected Court Cases Which Illustrate the Contractual Obligation of the University Catalog

The following are some selected court cases which illustrate issues raised by construing the catalog in contractual terms. The issues include the obligation to teach the stated courses in the catalog, academic malpractice through failing to teach the course content described in the catalog, the obligation to follow the procedures published in the catalog, and the requirement to grant a degree according to published degree requirements stated in the catalog.

1. After a student enrolls in a degree program, the university is obligated to provide the courses necessary to complete the program. In Peretti v. State of Montana,[23] the Missoula Technical Center, due to a budget cut, eliminated some courses which had been listed in the aviation program were unable to complete the program and receive their diplomas. The students sued the Center. The court ruled that the relationship between the student and the institution was contractual and that the elimination of the courses of study constituted breach of an implied contract. The court held that the State of Montana was liable to the students. The state was ordered to compensate each of the students for the amount of damages they could prove.

Another popular area of litigation is the students' claim that

the professor did not teach the course content as announced in the catalog. This is often referred to as academic malpractice. In most suits, the courts have ruled in favor of the institution, primarily because academic malpractice has not yet been accurately defined. An example of such litigation is Janniello v. University of Bridgeport.[24] Janniello charged that the course was worthless and that she should be entitled to a refund of tuition costs, loss of wages, and travel expenses. The court denied her claim, but the case provides a reminder of the possibility that course descriptions may be considered contractual requirements. In these cases, the students have been unable to prove to the court's satisfaction that the university has not complied with the course descriptions. As additional litigation is reviewed by the courts, so as to better define academic malpractice, it is probable that procedures and precedents will be established which favor the student. 2.

Institutions have also been determined to be in breach of contract in cases where the course of instruction does not meet the conditions stated in the catalog. In Zumbrun v. University of Southern California,[25] the student sued for damages because the instructor in a Sociology class for which she had registered went on strike and did not complete the course or give the final examination. The court recognized terms of the catalog as contractual, but stated that "neither a university nor a professor giving a course becomes monetarily indebted for the 'work and labor' expended by a student in pursuing a course of study offered by a university.[26] The student had sought $518 for tuition reimbursement, $5,000 for present income loss, and $60,000 for future income loss. 3.

4. Universities are obligated to follow procedures published in the catalog. In Lyons v. Salve Regina College,[27] a fourth-year nursing student requested an incomplete grade for a course. In the catalog, it stated that appeals concerning grades would be heard by the Grade Appeals Committee. The Committee met and ruled in favor of the student. The Dean of Students overruled the committee and denied the appeal. As a result, the student was dropped from the nursing program. The student claimed that this procedure did not conform to the published standard and filed suit against the college. The court ruled that the catalog clearly implied that the decision of the Committee should be final. The college was ordered to readmit the student to the nursing program although she had since completed a baccalaureate degree in another program.

5. The University catalog, in compliance to the "Student Consumer Information Act," is required to state the requirements for obtaining a degree. The university is also obligated to award a degree to a student if the student shows he has completed all requirements for the degree. In the case of Tanner v. Board of Trustees of University of Illinois,[28] a Ph.D. candidate in the Department of Business Administration had completed all of the degree requirements. He later received a letter indicating that he could not be awarded a degree until he completed further requirements. He brought suit against the university on the ground that it had breached an implied contract to issue the degree. The court stated that "although we recognize that the university is under a discretionary and not a mandatory duty to issue degrees to persons participating in a curriculum . . . the university may not act maliciously or in bad faith by arbitrarily and capriciously refusing

to award a degree to a student who fulfills his degree requirements."[29] (In this case, the student also sought $100,000 in damages. However, the court ruled that damage actions must be filed with another court).

6. In addition to catalog provisions, a university is required to live up to its other published policies. In Kantor v. Schmidt,[30] a student brought action to require the university to grant her a Bachelor of Arts degree since she had completed the 120 hours required. However, the university asserted that she was still deficient in some requirements. The university was required by the (state) Commissioner of Education to "record student progress toward the achievement of requirements, and to inform students periodically of their progress and remaining obligations."[31] The student completed the required 120 hours but claimed she was never notified of any degree deficiencies prior to the expected date of graduation. The court ruled that the university had not complied with the published regulation of the Commissioner of Education and, therefore, since the student had completed 120 hours, she was entitled to receive her degree.

we don't say we'll do this, but Sr. Audit attempts to do it

Disclaimer Clauses in the Catalog

Until 1970, most university catalogs included a disclaimer clause which stated that the university retained the right to change the policies, procedures, degree requirements, or curricula without notification to the student. Although these statements may discourage students from initiating litigation against the university, the statement by itself has been judged insufficient to alter the contractual obligations of the catalog. As a result, most universities have eliminated the disclaimer statements from the catalog.

Although the university is contractually bound by its published policies and procedures, there is more latitude regarding the need for continual change in curriculum. To avoid misunderstandings and to prevent consumer suits, a registrar's handbook suggests that a statement be printed preceding the course listings which clarifies: "Courses listed in this catalog are subject to change through normal academic channels. New courses and changes in existing course work are initiated by the cognizant departments or programs, approved by the appropriate academic dean, the academic vice-president, the curriculum committees, and the senate. Additions to the curriculum for the ensuing year are published each fall in the Catalog Supplement."[32]

Summary and Recommendations

The catalog has become a "Catch 22" for colleges and universities. It is necessary to publish the catalog, but by it, the institution becomes liable for the information which is printed. Since the courts have determined the contractual relationship which is established by the university catalog, certain precautionary steps need to be taken by all institutions to avoid contractual liability litigation. A university should implement the following guidelines:

1. Carefully review the catalog for the corrections of all printed information, especially that which could be considered part of an expressed or implied contract.
2. Make any adjustments necessary in the catalog information to provide the accurate statements of contractual obligations.

3. Establish a procedure for change in which all policies, procedures, degree requirements or curriculum are changed for the effective printing date of the catalog, requiring all changes after the publication of the catalog to be deferred until the next printing.

4. Implement procedures and support systems which insure the honoring of the catalog information such as a computer degree check file which monitors the student automatically according to the date of entry into the university and major programs.

5. Inform necessary personnel (i.e. professors, advisors, etc.) of the binding nature of the catalog and of their responsibility to honor the stated catalog requirements.

REFERENCES

[1]Gott v. Berea College, 156 Ky. 376, 161 S.W. 204 (1913), 161 S.W. at 206 (emphasis added).

[2]Id.

[3]Guerriert v. Tyson, 147 Pa. Super Ct. 239, 24 A.2d 468 (1942).

[4]Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir. 1961), 368 U.S. 930 (1961).

[5]Goss v. Lopez, 419 U.S. 565 (1975).

[6]Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

[7]Id. at 506.

[8]Eisele v. Ayers, 63 Ill. App. 3d 1039, 381 N.E.2d 21 (1978).

[9]Id. at 25.

[10]H.F. Owens, "Some Legal Obligations of Instructors and Educational Managers," paper presented at South Carolina Technical Educational Association, 17 March 1979.

[11]E. Gordon Gee and David J. Sperry, Education Law and the Public Schools: A Compendium (Boston: Allyn and Bacon, Inc., 1978), p. 4.

[12]Bar Review, Reference 1: Torts, Contracts, Remedies (Los Angeles: Harcourt Brace Jovanovich Legal and Professional Publications, Inc., 1979), p. 115.

[13]Steinberg v. Chicago Medical School, 41 Ill. App. 3d 804, 354 N.E.2d 586, 59 (1976).

[14]Green v. Howard University, 271 F. Supp. 609 (U.S. District Court for the District of Columbia 1967).

[15]Owens, "Some Legal Obligations of Instructors and Educational Managers."

[16]People v. New York Law School, 68 Hun. 118, 22 N.Y.S. 663 (1893).

[17]Steinhauer v. Arkins, 18 Colo. App. 49, 69 P. 1075 (1902).

[18] State v. Lincoln Medical College, 81 Neb. 533, 116 N.W. 294 (1908).

[19] Federal Interagency Committee on Education, Keeping Your School or College Catalog in Compliance with Federal Laws and Regulations (Washington D.C.: U.S. Government Printing Office, June 1978), p. 1.

[20] Ibid., 2-14.

[21] H. G. Heriot, "Legal Issues Concerning Students," Legal Counsel to State Board for Technical and Comprehensive Education, Columbia, South Carolina, January 1979, p. 4.

[22] D. P. Young, "The Law and the Registrar, Admissions Office," College and University, Summer 1974, p. 751.

[23] Peretti v. State of Montana, 464 F. Supp. 784 (United States District Court, D. Montana 1979).

[24] Janniello v. University of Bridgeport, Court of Common Pleas, Bridgeport, Conn. (June 11, 1977).

[25] Zumbrun v. University of Southern California, 25 Cal. App. 3d 1, 101 Cal. Rptr. 499 (1972).

[26] Id. at 507.

[27] Lyons v. Salve Regina College, 422 F. Supp. 1354 (United States District Court, D. Rhode Island 1976).

[28] Tanner v. Board of Trustees of University of Illinois, 48 Ill. App. 3d 680, 363 N.E. 2d 208 (1977).

[29] Id. at 209.

[30] Kantor v. Schmidt, 423 N.Y.S. 2d 208 (1979).

[31] Id. at 209.

[32] C. J. Quann and Associates, Admissions, Academic Records, and Registrar Services (San Francisco: Jossey-Bass, 1979), p. 181.